

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 5
92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Offered April 9, 2003.

Senate Substitute adopted, April 9, 2003.

Taken up for Perfection April 9, 2003. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0356S.06P

AN ACT

To repeal sections 217.362, 217.541, 217.730, 217.750, 217.760, 478.610, 513.653, 556.061, 557.036, 558.011, 558.016, 558.019, 559.026, 559.115, 559.615, 568.045, 570.030, and 570.040, RSMo, and to enact in lieu thereof twenty new sections relating to various sentencing provisions, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 217.362, 217.541, 217.730, 217.750, 217.760, 478.610, 513.653, 556.061, 557.036, 558.011, 558.016, 558.019, 559.026, 559.115, 559.615, 568.045, 570.030, and 570.040, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 217.362, 217.541, 217.730, 217.750, 217.760, 478.610, 513.653, 556.061, 557.036, 558.011, 558.016, 558.019, 559.026, 559.115, 559.615, 565.305, 565.350, 568.045, 570.030, and 570.040, to read as follows:

217.362. 1. The department of corrections shall design and implement an intensive long-term program for the treatment of chronic nonviolent offenders with serious substance abuse addictions who have not pleaded guilty to or been convicted of a dangerous felony as defined in section 556.061, RSMo.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

2. Prior to sentencing, any judge considering an offender for this program shall notify the department. The potential candidate for the program shall be screened by the department to determine eligibility. The department shall, by regulation, establish eligibility criteria and inform the court of such criteria. The department shall notify the court as to the offender's eligibility and the availability of space in the program. Notwithstanding any other provision of law to the contrary, except as provided for in section 558.019, RSMo, if an offender is eligible and there is adequate space, the court may sentence a person to the program which shall consist of institutional drug **or alcohol** treatment for a period of **at least twelve and no more than** twenty-four months, as well as a term of incarceration. **The department shall determine the nature, intensity, duration, and completion criteria of the education, treatment, and aftercare portions of any program services provided.** Execution of the offender's term of incarceration shall be suspended pending completion of said program. Allocation of space in the program may be distributed by the department in proportion to drug arrest patterns in the state. If the court is advised that an offender is not eligible or that there is no space available, the court shall consider other authorized dispositions.

3. [Notwithstanding any other provision of the law to the contrary, upon successful completion of the program, the board of probation and parole may advise the sentencing court of the eligibility of the individual for probation. The original sentencing court shall hold a hearing to make a determination as to the fitness of the offender to be placed on probation. The court shall follow the recommendation of the board unless the court makes a determination that such a placement would be an abuse of discretion. If an offender successfully completes the program before the end of the twenty-four-month period, the department may petition the court and request that probation be granted immediately.] **Upon successful completion of the program, the board of probation and parole shall advise the sentencing court of an offender's probationary release date thirty days prior to release. If the court determines that probation is not appropriate the court may order the execution of the offender's sentence.**

4. If it is determined by the department that the offender has not successfully completed the program, or that the offender is not cooperatively participating in the program, the offender shall be removed from the program and the court shall be advised. Failure of an offender to complete the program shall cause the offender to serve the sentence prescribed by the court and void the right to be considered for probation on this sentence.

5. An offender's first incarceration in a department of corrections program pursuant to this section prior to release on probation shall not be considered a previous prison commitment for the purpose of determining a minimum prison term pursuant to the provisions of section 558.019, RSMo.

217.541. 1. The department shall by rule establish a program of house arrest. The

director or his designee may extend the limits of confinement of offenders serving sentences for class C or D felonies who have [one year] **two years** or less remaining prior to release on parole, conditional release, or discharge to participate in the house arrest program.

2. The offender referred to the house arrest program shall remain in the custody of the department and shall be subject to rules and regulations of the department pertaining to offenders of the department until released on parole or conditional release by the state board of probation and parole.

3. The department shall require the offender to participate in work or educational or vocational programs and other activities that may be necessary to the supervision and treatment of the offender.

4. An offender released to house arrest shall be authorized to leave his place of residence only for the purpose and time necessary to participate in the program and activities authorized in subsection 3 of this section.

5. The board of probation and parole shall supervise every offender released to the house arrest program and shall verify compliance with the requirements of this section and such other rules and regulations that the department shall promulgate and may do so by remote electronic surveillance. If any probation/parole officer has probable cause to believe that an offender under house arrest has violated a condition of the house arrest agreement, the probation/parole officer may issue a warrant for the arrest of the offender. The probation/parole officer may effect the arrest or may deputize any officer with the power of arrest to do so by giving the officer a copy of the warrant which shall outline the circumstances of the alleged violation. The warrant delivered with the offender by the arresting officer to the official in charge of any jail or other detention facility to which the offender is brought shall be sufficient legal authority for detaining the offender. An offender arrested under this section shall remain in custody or incarcerated without consideration of bail. The director or his designee, upon recommendation of the probation and parole officer, may direct the return of any offender from house arrest to a correctional facility of the department for reclassification.

6. Each offender who is released to house arrest shall pay a percentage of his wages, established by department rules, to a maximum of the per capita cost of the house arrest program. The money received from the offender shall be deposited in the inmate fund and shall be expended to support the house arrest program.

217.730. 1. The period served on parole, except for judicial parole granted or revoked pursuant to section 559.100, RSMo, shall be deemed service of the term of imprisonment and, subject to the provisions of section 217.720 relating to an offender who is or has been a fugitive from justice, the total time served may not exceed the maximum term or sentence.

2. When an offender on parole or conditional release, before the expiration of the term for which the offender was sentenced, has performed the obligation of his parole for such time

as satisfies the board that his final release is not incompatible with the best interest of society and the welfare of the individual, the board may make a final order of discharge and issue a certificate of discharge to the offender. No such order of discharge shall be made in any case less than three years after the date on which the offender was paroled or conditionally released except where the sentence expires earlier.

3. Upon final discharge, persons shall be informed in writing on the process and procedure to register to vote.

217.750. 1. At the request of a judge of any circuit court, the board shall provide probation services for such court as provided in subsection 2 of this section.

2. The board shall provide probation services for any person convicted of any class of felony. The board shall not [be required to] provide probation services for any class of misdemeanor except those class A misdemeanors the basis of which is contained in chapters 565[,] **and 566 [and 570],** RSMo, or in section 568.050, RSMo, 455.085, RSMo, or section 455.538, RSMo. [The board may in its discretion accept other persons for supervision who have been convicted of driving while intoxicated under the provisions of section 577.023, RSMo.]

217.760. 1. In all felony cases and class A misdemeanor cases, the basis of which misdemeanor cases are contained in chapters 565[,] **and 566, [and 570,]** RSMo, and section 577.023, RSMo, at the request of a circuit judge of any circuit court, the board shall assign one or more state probation and parole officers to make an investigation of the person convicted of the crime or offense before sentence is imposed. **In all felony cases in which the recommended sentence established by the sentencing advisory commission pursuant to subsection 6 of section 558.019, RSMo, includes probation but the recommendation of the prosecuting attorney or circuit attorney does not include probation, the board of probation and parole shall, prior to sentencing, provide the judge with a report on available alternatives to incarceration.**

2. The report of the presentence investigation or preparole investigation shall contain any prior criminal record of the defendant and such information about his **or her** characteristics, his **or her** financial condition, his **or her** social history [and], the circumstances affecting his **or her** behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, **information concerning the impact of the crime upon the victim, the recommended sentence established by the sentencing advisory commission and available alternatives to incarceration including opportunities for restorative justice,** as well as a recommendation by the probation and parole officer. The officer shall secure such other information as may be required by the court and, whenever it is practicable and needed, such investigation shall include a physical and mental examination of the defendant.

478.610. 1. There shall be three circuit judges in the thirteenth judicial circuit consisting

of the counties of Boone and Callaway. These judges shall sit in divisions numbered one, two and three. **Beginning on January 1, 2007, there shall be four circuit judges in the thirteenth judicial circuit and these judges shall sit in divisions numbered one, two, three, and four.**

2. The circuit judge in division two shall be elected in 1980. The circuit judges in divisions one and three shall be elected in 1982. **The circuit judge in division four shall be elected in 2006 for a two-year term and thereafter in 2008 for a full six-year term.**

3. The authority for a majority of judges of the thirteenth judicial circuit to appoint or retain a commissioner pursuant to section 478.003 shall expire August 28, 2001. As of such date, there shall be one additional associate circuit judge position in Boone County than is provided pursuant to section 478.320.

513.653. 1. Law enforcement agencies involved in using the federal forfeiture system under federal law shall be required at the end of their respective fiscal year to acquire an independent audit of the federal seizures and the proceeds received therefrom and provide this audit to their respective governing body **and to the department of public safety**. A copy of such audit shall be provided to the state auditor's office. This audit shall be paid for out of the proceeds of such federal forfeitures. **The department of public safety shall not issue funds to any law enforcement agency that fails to comply with the provisions of this section.**

2. Intentional or knowing failure to comply with the audit requirement contained in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand dollars.

556.061. In this code, unless the context requires a different definition, the following shall apply:

(1) "Affirmative defense" has the meaning specified in section 556.056;

(2) "Burden of injecting the issue" has the meaning specified in section 556.051;

(3) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;

(4) "Confinement":

(a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

a. A court orders the person's release; or

b. The person is released on bail, bond, or recognizance, personal or otherwise; or

c. A public servant having the legal power and duty to confine the person authorizes his release without guard and without condition that he return to confinement;

(b) A person is not in confinement if:

a. The person is on probation or parole, temporary or otherwise; or

b. The person is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport the person to or from a place of confinement;

(5) "Consent": consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor;

or

(b) It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is induced by force, duress or deception;

(6) "Criminal negligence" has the meaning specified in section 562.016, RSMo;

(7) "Custody", a person is in custody when the person has been arrested but has not been delivered to a place of confinement;

(8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical injury results, forcible rape, forcible sodomy, kidnapping, murder in the second degree [and], **assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, and robbery in the first degree;**

(9) "Dangerous instrument" means any instrument, article or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury;

(10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or metal knuckles;

(11) "Felony" has the meaning specified in section 556.016;

(12) "Forcible compulsion" means either:

(a) Physical force that overcomes reasonable resistance; or

(b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnapping of such person or another person;

(13) "Incapacitated" means that physical or mental condition, temporary or permanent, in which a person is unconscious, unable to appraise the nature of such person's conduct, or unable to communicate unwillingness to an act. A person is not incapacitated with respect to an

act committed upon such person if he or she became unconscious, unable to appraise the nature of such person's conduct or unable to communicate unwillingness to an act, after consenting to the act;

(14) "Infraction" has the meaning specified in section 556.021;

(15) "Inhabitable structure" has the meaning specified in section 569.010, RSMo;

(16) "Knowingly" has the meaning specified in section 562.016, RSMo;

(17) "Law enforcement officer" means any public servant having both the power and duty to make arrests for violations of the laws of this state, and federal law enforcement officers authorized to carry firearms and to make arrests for violations of the laws of the United States;

(18) "Misdemeanor" has the meaning specified in section 556.016;

(19) "Offense" means any felony, misdemeanor or infraction;

(20) "Physical injury" means physical pain, illness, or any impairment of physical condition;

(21) "Place of confinement" means any building or facility and the grounds thereof wherein a court is legally authorized to order that a person charged with or convicted of a crime be held;

(22) "Possess" or "possessed" means having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on his or her person or within easy reach and convenient control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;

(23) "Public servant" means any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses;

(24) "Purposely" has the meaning specified in section 562.016, RSMo;

(25) "Recklessly" has the meaning specified in section 562.016, RSMo;

(26) "Ritual" or "ceremony" means an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity;

(27) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive or physical condition. Serious emotional injury shall be established by testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty;

(28) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body;

(29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

(30) "Sexual contact" means any touching of the genitals or anus of any person, or the breast of any female person, or any such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person;

(31) "Sexual performance", any performance, or part thereof, which includes sexual conduct by a child who is less than seventeen years of age;

(32) "Voluntary act" has the meaning specified in section 562.011, RSMo.

557.036. 1. [Subject to the limitation provided in subsection 3 of this section,] Upon a finding of guilt upon verdict or plea, the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard to the nature and circumstances of the offense and the history and character of the defendant and render judgment accordingly.

2. [The court shall instruct the jury as to the range of punishment authorized by statute and upon a finding of guilt to assess and declare the punishment as a part of their verdict, unless:] **Where an offense is submitted to the jury, the trial shall proceed in two stages. At the first stage, the jury shall decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment shall not be submitted to the jury at the first stage.**

3. **If the jury at the first stage of a trial finds the defendant guilty of the submitted offense, the second stage of the trial shall proceed. The issue at the second stage of the trial shall be the punishment to be assessed and declared. Evidence supporting or mitigating punishment may be presented. Such evidence may include, within the discretion of the court, evidence concerning the impact of the crime upon the victim, the victim's family and others, the nature and circumstances of the offense, and the history and character of the defendant. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. The court shall instruct the jury as to the range of punishment authorized by statute for each submitted offense. The attorneys may argue the issue of punishment to the jury, and the state shall have the right to open and close the argument. The jury shall assess and declare the punishment as authorized by statute.**

4. **A second stage of the trial shall not proceed and the court, and not the jury, shall assess punishment if:**

(1) The defendant requests in writing, prior to voir dire, that the court assess the punishment in case of a finding of guilt; or

(2) The state pleads and proves the defendant is a prior offender, persistent offender, dangerous offender, or persistent misdemeanor offender as defined in section 558.016, RSMo, a persistent sexual offender as defined in section 558.018, RSMo, or a predatory sexual offender as defined in section 558.018, RSMo.

If the jury [finds the defendant guilty but] cannot agree on the punishment to be assessed, the court shall proceed as provided in subsection 1 of this section. If [there be a trial by jury and the jury is to assess punishment and if], after due deliberation by the jury, the court finds the jury cannot agree on punishment, then the court may instruct the jury that if it cannot agree on punishment that [it may return its verdict without assessing punishment and] the court will assess punishment.

[3.] 5. If the jury returns a verdict of guilty **in the first stage** and declares a term of imprisonment [as provided in subsection 2 of this section] **in the second stage**, the court shall proceed as provided in subsection 1 of this section except that any term of imprisonment imposed cannot exceed the term declared by the jury unless the term declared by the jury is less than the authorized lowest term for the offense, in which event the court cannot impose a term of imprisonment greater than the lowest term provided for the offense.

[4.] 6. If the defendant is found to be a prior offender, persistent offender, dangerous offender or persistent misdemeanor offender as defined in section 558.016, RSMo:

(1) If he has been found guilty of an offense, the court shall proceed as provided in section 558.016, RSMo; or

(2) If he has been found guilty of a class A felony, the court may impose any sentence authorized for the class A felony.

[5.] 7. The court shall not seek an advisory verdict from the jury in cases of prior offenders, persistent offenders, dangerous offenders, persistent sexual offenders or predatory sexual offenders; if an advisory verdict is rendered, the court shall not deem it advisory, but shall consider it as mere surplusage.

558.011. 1. The authorized terms of imprisonment, including both prison and conditional release terms, are:

(1) For a class A felony, a term of years not less than ten years and not to exceed thirty years, or life imprisonment;

(2) For a class B felony, a term of years not less than five years and not to exceed fifteen years;

(3) For a class C felony, a term of years not to exceed seven years;

(4) For a class D felony, a term of years not to exceed [five] **four** years;

(5) For a class A misdemeanor, a term not to exceed one year;

- (6) For a class B misdemeanor, a term not to exceed six months;
- (7) For a class C misdemeanor, a term not to exceed fifteen days.

2. In cases of class C and D felonies, the court shall have discretion to imprison for a special term not to exceed one year in the county jail or other authorized penal institution, and the place of confinement shall be fixed by the court. If the court imposes a sentence of imprisonment for a term longer than one year upon a person convicted of a class C or D felony, it shall commit the person to the custody of the department of corrections for a term of years not less than two years and not exceeding the maximum authorized terms provided in subdivisions (3) and (4) of subsection 1 of this section.

3. (1) When a regular sentence of imprisonment for a felony is imposed, the court shall commit the [defendant] **person** to the custody of the department of corrections for the term imposed under section 557.036, RSMo, or until released under procedures established elsewhere by law.

(2) A sentence of imprisonment for a misdemeanor shall be for a definite term and the court shall commit the [defendant] **person** to the county jail or other authorized penal institution for the term of his **or her** sentence or until released under procedure established elsewhere by law.

4. (1) A sentence of imprisonment for a term of years for felonies other than dangerous felonies as defined in section 556.061, RSMo, and other than sentences of imprisonment which involve the individual's fourth or subsequent remand to the department of corrections shall consist of a prison term and a conditional release term. The conditional release term of any term imposed under section 557.036, RSMo, shall be:

- (a) One-third for terms of nine years or less;
- (b) Three years for terms between nine and fifteen years;
- (c) Five years for terms more than fifteen years; and the prison term shall be the remainder of such term. The prison term may be extended by the board of probation and parole pursuant to subsection 5 of this section.

(2) "Conditional release" means the conditional discharge of an offender by the board of probation and parole, subject to conditions of release that the board deems reasonable to assist the offender to lead a law-abiding life, and subject to the supervision under the state board of probation and parole. The conditions of release shall include avoidance by the offender of any other crime, federal or state, and other conditions that the board in its discretion deems reasonably necessary to assist the releasee in avoiding further violation of the law.

5. The date of conditional release from the prison term may be extended up to a maximum of the entire sentence of imprisonment by the board of probation and parole. The director of any division of the department of corrections except the board of probation and parole may file with the board of probation and parole a petition to extend the conditional release date

when an offender fails to follow the rules and regulations of the division or commits an act in violation of such rules. Within ten working days of receipt of the petition to extend the conditional release date, the board of probation and parole shall convene a hearing on the petition. The offender shall be present and may call witnesses in his **or her** behalf and cross-examine witnesses appearing against **[him] the offender**. The hearing shall be conducted as provided in section 217.670, RSMo. If the violation occurs in close proximity to the conditional release date, the conditional release may be held for a maximum of fifteen working days to permit necessary time for the division director to file a petition for an extension with the board and for the board to conduct a hearing, provided some affirmative manifestation of an intent to extend the conditional release has occurred prior to the conditional release date. If at the end of a fifteen-working-day period a board decision has not been reached, the offender shall be released conditionally. The decision of the board shall be final.

558.016. 1. The court may sentence a person who has pleaded guilty to or has been found guilty of an offense to a term of imprisonment as authorized by section 558.011 or to a term of imprisonment authorized by a statute governing the offense, if it finds the defendant is a prior offender or a persistent misdemeanor offender, or to an extended term of imprisonment if it finds the defendant is a persistent offender or a dangerous offender.

2. A "prior offender" is one who has pleaded guilty to or has been found guilty of one felony.

3. A "persistent offender" is one who has pleaded guilty to or has been found guilty of two or more felonies committed at different times.

4. A "dangerous offender" is one who:

(1) Is being sentenced for a felony during the commission of which he knowingly murdered or endangered or threatened the life of another person or knowingly inflicted or attempted or threatened to inflict serious physical injury on another person; and

(2) Has pleaded guilty to or has been found guilty of a class A or B felony or a dangerous felony.

5. A "persistent misdemeanor offender" is one who has pleaded guilty to or has been found guilty of two or more class A or B misdemeanors, committed at different times, which are defined as offenses under chapters 195, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, and 576, RSMo.

6. The pleas or findings of guilty shall be prior to the date of commission of the present offense.

7. The total authorized maximum terms of imprisonment for a persistent offender or a dangerous offender are:

(1) For a class A felony, any sentence authorized for a class A felony;

(2) For a class B felony, **[a term of years not to exceed thirty years] any sentence**

authorized for a class A felony;

(3) For a class C felony, [a term of years not to exceed twenty years] **any sentence authorized for a class B felony;**

(4) For a class D felony, [a term of years not to exceed ten years] **any sentence authorized for a class C felony.**

8. An offender convicted of a nonviolent class C or class D felony with no prior prison commitments, after serving one hundred twenty days of his or her sentence, may, in writing, petition the court to serve the remainder of his or her sentence on probation, parole, or other court-approved alternative sentence. No hearing shall be conducted unless the court deems it necessary. Upon the offender petitioning the court, the department of corrections shall submit a report to the sentencing court which evaluates the conduct of the offender while in custody, alternative custodial methods available to the offender, and shall recommend whether the offender be released or remain in custody. If the report issued by the department is favorable and recommends probation, parole, or other alternative sentence, the court shall follow the recommendations of the department unless the court makes the determination that such placement may be an abuse of discretion. Any placement of an offender pursuant to section 559.115, RSMo, shall be excluded from the provisions of this subsection.

558.019. 1. This section shall not be construed to affect the powers of the governor under article IV, section 7, of the Missouri Constitution. This statute shall not affect those provisions of section 565.020, RSMo, section 558.018 or section 571.015, RSMo, which set minimum terms of sentences, or the provisions of section 559.115, RSMo, relating to probation.

2. The provisions of **subsections 2 to 5** of this section shall be applicable to all classes of felonies except those set forth in chapter 195, RSMo, and those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison commitment" means and is the receipt by the department of corrections of a [defendant] **offender** after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to section 217.378, RSMo. Other provisions of the law to the contrary notwithstanding, any [defendant] **offender** who has pleaded guilty to or has been found guilty of a felony other than a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the [defendant] **offender** has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the [defendant] **offender** must serve shall be forty percent of his **or her** sentence or until the [defendant] **offender** attains seventy years of age, and has served at least [forty] **thirty** percent of the sentence imposed,

whichever occurs first;

(2) If the [defendant] **offender** has two previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the [defendant] **offender** must serve shall be fifty percent of his **or her** sentence or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

(3) If the [defendant] **offender** has three or more previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the [defendant] **offender** must serve shall be eighty percent of his **or her** sentence or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

3. Other provisions of the law to the contrary notwithstanding, any [defendant] **offender** who has pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

4. For the purpose of determining the minimum prison term to be served, the following calculations shall apply:

(1) A sentence of life shall be calculated to be thirty years;

(2) Any sentence either alone or in the aggregate with other consecutive sentences for crimes committed at or near the same time which is over seventy-five years shall be calculated to be seventy-five years.

5. For purposes of this section, the term "minimum prison term" shall mean time required to be served by the [defendant] **offender** before he **or she** is eligible for parole, conditional release or other early release by the department of corrections. Except that the board of probation and parole, in the case of consecutive sentences imposed at the same time pursuant to a course of conduct constituting a common scheme or plan, shall be authorized to convert consecutive sentences to concurrent sentences, when the board finds, after hearing with notice to the prosecuting or circuit attorney, that the sum of the terms results in an unreasonably excessive total term, taking into consideration all factors related to the crime or crimes committed and the sentences received by others similarly situated.

6. (1) A sentencing advisory commission is hereby created to consist of [eleven] **thirteen** members. One member shall be appointed by the speaker of the house. One member shall be appointed by the president pro tem of the senate. One member shall be the director of the department of corrections. [Six] **Eight** members shall be appointed by and serve at the pleasure of the governor from among the following: the public defender commission; [private citizens]

four private citizens, two from urban and two from rural areas of the state; a private member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members shall be appointed by the supreme court, one from a metropolitan area and one from a rural area. All members of the sentencing commission appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory commission at the pleasure of the governor.

(2) The commission shall study sentencing practices in the circuit courts throughout the state for the purpose of determining whether and to what extent disparities exist among the various circuit courts with respect to the length of sentences imposed and the use of probation for [defendants] **offenders** convicted of the same or similar crimes and with similar criminal histories. The commission shall also study and examine whether and to what extent sentencing disparity among economic and social classes exists in relation to the sentence of death and if so, the reasons therefor **sentences are comparable to other states, if the length of the sentence is appropriate, and the rate of rehabilitation based on sentence.** It shall compile statistics, examine cases, draw conclusions, and perform other duties relevant to the research and investigation of disparities in death penalty sentencing among economic and social classes.

(3) The commission shall establish a system of recommended sentences, within the statutory minimum and maximum sentences provided by law for each felony committed under the laws of this state. This system of recommended sentences shall be distributed to all sentencing courts within the state of Missouri. The recommended sentence for each crime shall take into account, but not be limited to, the following factors:

- (a) The nature and severity of each offense;
- (b) The record of prior offenses by the offender;
- (c) The data gathered by the commission showing the duration and nature of sentences imposed for each crime; and
- (d) The resources of the department of corrections and other authorities to carry out the punishments that are imposed.

(4) **The commission shall study alternative sentences, prison work programs, work release, home-based incarceration, probation and parole options, and any other programs and report the feasibility of these options in Missouri.**

(5) The commission shall publish and distribute its [system of recommended sentences] **recommendations** on or before July 1, [1995] **2004**. The commission shall study the implementation and use of the [system of recommended sentences] **recommendations** until July 1, [1998] **2005**, and return a [final] report to the governor, the speaker of the house of representatives, and the president pro tem of the senate. Following the July 1, [1998] **2005**, report, the commission [may] **shall** revise the recommended sentences every [three] **two** years.

[(5)] **(6)** The governor shall select a chairperson who shall call meetings of the

commission as required or permitted pursuant to the purpose of the sentencing commission.

~~[(6)]~~ **(7)** The members of the commission shall not receive compensation for their duties on the commission, but shall be reimbursed for actual and necessary expenses incurred in the performance of these duties and for which they are not reimbursed by reason of their other paid positions.

~~[(7)]~~ **(8)** The circuit and associate circuit courts of this state, the office of the state courts administrator, the department of public safety, and the department of corrections shall cooperate with the commission by providing information or access to information needed by the commission. The office of the state courts administrator will provide needed staffing resources.

7. Courts shall retain discretion to lower or exceed the sentence recommended by the commission as otherwise allowable by law, and to order restorative justice methods, when applicable.

8. In all cases involving class C and D felony violations of chapter 195, RSMo, where the department receives custody of an offender, the department of corrections shall make a report to the board of probation and parole within one hundred twenty days after receiving custody of the offender. The report shall contain a description of the circumstances of the offense, an evaluation of the offender's need for drug or alcohol treatment, an evaluation of the offender's conduct while in custody, and available options, if any, for punishing the offender in settings other than prison. The board of probation and parole shall have the authority for the duration of the sentence imposed by the court to place the offender in any combination of treatment, incarceration, supervised release, community service, and restorative justice.

9. If the imposition or execution of a sentence is suspended, the court may consider ordering any or all of the following restorative justice methods, or any other method that the court finds just or appropriate:

- (1) Restitution to any victim for costs incurred as a result of the offender's actions;**
- (2) Offender treatment programs;**
- (3) Mandatory community service;**
- (4) Work release programs in local facilities; and**
- (5) Community based residential and nonresidential programs.**

10. The provisions of this section shall apply only to offenses occurring on or after August 28, [1994] 2003.

559.026. Except in infraction cases, when probation is granted, the court, in addition to conditions imposed ~~[under]~~ **pursuant to** section 559.021, may require as a condition of probation that the ~~[defendant]~~ **offender** submit to a period of detention **up to forty-eight hours after the determination by a probation or parole officer that the offender violated a**

condition of continued probation or parole in an appropriate institution at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court shall designate, **or the board of probation and parole shall direct**. Any person placed on probation in a county of the first class or second class or in any city with a population of five hundred thousand or more and detained as herein provided shall be subject to all provisions of section 221.170, RSMo, even though he was not convicted and sentenced to a jail or workhouse.

(1) In misdemeanor cases, the period of detention under this section shall not exceed the shorter of fifteen days or the maximum term of imprisonment authorized for the misdemeanor by chapter 558, RSMo.

(2) In felony cases, the period of detention under this section shall not exceed one hundred twenty days.

(3) If probation is revoked and a term of imprisonment is served by reason thereof, the time spent in a jail, **half-way house, honor center**, workhouse or other institution as a detention condition of probation shall be credited against the prison or jail term served for the offense in connection with which the detention condition was imposed.

559.115. 1. Neither probation nor parole shall be granted by the circuit court between the time the transcript on appeal from the [defendant's] **offender's** conviction has been filed in appellate court and the disposition of the appeal by such court.

2. **Unless otherwise prohibited by subsection 5 of this section**, a circuit court only upon its own motion and not that of the state or the [defendant] **offender** shall have the power to grant probation to a [defendant] **offender** anytime up to one hundred twenty days after such [defendant] **offender** has been delivered to [the custody of] the department of corrections but not thereafter. The court may request information and a recommendation from the department concerning the [defendant] **offender** and such [defendant's] **offender's** behavior during the period of incarceration. Except as provided in this section, the court may place the [defendant] **offender** on probation in a program created pursuant to section 217.777, RSMo, or may place the [defendant] **offender** on probation with any other conditions authorized by law.

3. **The court may recommend placement of an offender in a department of corrections one-hundred-twenty-day-program. Upon the recommendation of the court, the department of corrections shall determine the offender's eligibility for the program, the nature, intensity, and duration of any offender's participation in a program and the availability of space for an offender in any program. When the court recommends and receives placement of an offender in a department of corrections one-hundred-twenty-day-program, the offender shall be released on probation if the department of corrections determines that the offender has successfully completed the program except as follows. Upon successful completion of a treatment program, the board of probation and parole shall advise the sentencing court of an offender's**

probationary release date thirty days prior to release. The court shall release the offender unless such release constitutes an abuse of discretion. If the court determined that there is an abuse of discretion, the court may order the execution of the offender's sentence only after conducting a hearing on the matter within ninety to one hundred twenty days of the offender's sentence. If the court does not respond when an offender successfully completes the program, the offender shall be released on probation. Upon successful completion of a shock incarceration program, the board of probation and parole shall advise the sentencing court of an offender's probationary release date thirty days prior to release. The court shall follow the recommendation of the department unless the court determines that probation is not appropriate. If the court determines that probation is not appropriate, the court may order the execution of the offender's sentence only after conducting a hearing on the matter within ninety to one hundred twenty days of the offender's sentence. If the department determines that an offender is not successful in a program, then after one hundred days of incarceration the circuit court shall receive from the department of corrections a report on the offender's participation in the program and department recommendations for terms and conditions of an offender's probation. The court shall then release the offender on probation or order the offender to remain in the department to serve the sentence imposed.

4. If the department of correction's one-hundred-twenty-day-program is full, the court may place the offender in a private program approved by the department of corrections or the court. If the offender is convicted of a class C or class D nonviolent felony, the court may order probation while awaiting appointment to treatment.

[3.] 5. Except when the [defendant] offender has been found to be a predatory sexual offender pursuant to section 558.018, RSMo, the court shall request that the [defendant] offender be [place] placed in the sexual offender assessment unit of the department of corrections if the defendant has pleaded guilty to or has been found guilty of sexual abuse when classified as a class B felony.

[4.] 6. Unless the offender is being granted probation pursuant to successful completion of a one-hundred-twenty-day-program the circuit court shall notify the state in writing when the court intends to grant probation to the [defendant] offender pursuant to the provisions of this section. The state may, in writing, request a hearing within ten days of receipt of the court's notification that the court intends to grant probation. Upon the state's request for a hearing, the court shall grant a hearing as soon as reasonably possible. If the state does not respond to the court's notice in writing within ten days, the court may proceed upon its own motion to grant probation.

7. An offender's first incarceration for one hundred twenty days for

participation in a department of corrections program prior to release on probation shall not be considered a previous prison commitment for the purpose of determining a minimum prison term under the provisions of section 558.019.

[5.] **8.** Notwithstanding any other provision of law, probation may not be granted pursuant to this section to [defendants] **offenders** who have been convicted of murder in the second degree pursuant to section 565.021, RSMo; forcible rape pursuant to section 566.030, RSMo; forcible sodomy pursuant to section 566.060, RSMo; statutory rape in the first degree pursuant to section 566.032, RSMo; statutory sodomy in the first degree pursuant to section 566.062, RSMo; child molestation in the first degree pursuant to section 566.067, RSMo, when classified as a class B felony; abuse of a child pursuant to section 568.060, RSMo, when classified as a class A felony; a [defendant] **offender** who has been found to be a predatory sexual offender pursuant to section 558.018, RSMo; or any offense in which there exists a statutory prohibition against either probation or parole.

559.615. **1.** No judge, nor any person related within the third degree of consanguinity or affinity to a judge or any other county elected official with direct court supervision responsibilities, may have a material financial interest in any private entity which contracts to provide probation supervision or rehabilitation services pursuant to sections 559.600 to 559.615.

2. No person who provides assessment services or who makes a report, finding, or recommendation for any probationer to attend any counseling or other program as a condition or requirement of probation, may be related within the third degree of consanguinity or affinity to any person who has any financial interest, whether direct or indirect, in the counseling or other program or any financial interest, whether direct or indirect, in any private entity which provides the counseling or other program. Any person who violates this subsection shall thereafter:

(1) Immediately remit to the state of Missouri any financial income gained as a direct or indirect result of the action constituting the violation;

(2) Be prohibited from providing assessment or counseling services to or for the state board of probation and parole or any office thereof; and

(3) Be prohibited from having any financial interest, whether direct or indirect, in any private entity which provides assessment, counseling, or other services to the state board of probation and parole or any office thereof.

565.305. **1.** As used in this section, the following words and phrases shall mean:

(1) "Clone a human being" or "cloning a human being", the creation of a human being by any means other than by the fertilization of a naturally intact oocyte of a human female by a naturally intact sperm of a human male;

(2) "Cloned human being", a human being created by human cloning;

(3) "Public employee", any person employed by the state of Missouri or any

agency or political subdivision thereof;

(4) "Public facilities", any public institution, public facility, public equipment, or any physical asset owned, leased, or controlled by the state of Missouri or any agency or political subdivision thereof;

(5) "Public funds", any funds received or controlled by the state of Missouri or any agency or political subdivision thereof, including, but not limited to, funds derived from federal, state or local taxes, gifts or grants from any source, public or private, federal grants or payments, or intergovernmental transfers.

2. No person shall knowingly clone a human being, or participate in cloning a human being.

3. No person shall knowingly use public funds to clone a human being or attempt to clone a human being.

4. No person shall knowingly use public facilities to clone a human being or attempt to clone a human being.

5. No public employee shall knowingly allow any person to clone a human being or attempt to clone a human being while making use of public funds or public facilities.

6. Violation of subsections 2 to 5 of this section shall be a class B felony.

565.350. 1. Any pharmacist licensed pursuant to chapter 338, RSMo, commits the crime of tampering with a prescription or a prescription drug order as defined in section 338.095, RSMo, if such person knowingly:

(1) Causes the intentional adulteration of the concentration or chemical structure of a prescribed drug or drug therapy without the knowledge and consent of the prescribing practitioner;

(2) Misrepresents a misbranded, altered, or diluted prescription drug or drug therapy with the purpose of misleading the recipient or the administering person of the prescription drug or drug therapy; or

(3) Sells a misbranded, altered, or diluted prescription drug therapy with the intention of misleading the purchaser.

2. Tampering with a prescription drug order is a class A felony.

568.045. 1. A person commits the crime of endangering the welfare of a child in the first degree if:

(1) The person knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years old; or

(2) The person knowingly engages in sexual conduct with a person under the age of seventeen years over whom the person is a parent, guardian, or otherwise charged with the care and custody;

(3) The person knowingly encourages, aids or causes a child less than seventeen years of age to engage in any conduct which violates the provisions of chapter 195, RSMo;

(4) Such person enlists the aid, either through payment or coercion, of a person less than seventeen years of age to unlawfully manufacture, compound, produce, prepare, sell, transport, test or analyze amphetamine or methamphetamine or any of their analogues, or to obtain any material used to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues; or

(5) Such person, in the presence of a person less than seventeen years of age, unlawfully manufactures, compounds, produces, prepares, sells, transports, tests or analyzes amphetamine or methamphetamine or any of their analogues.

2. Endangering the welfare of a child in the first degree is a class [D] C felony unless the offense is committed as part of a ritual or ceremony, or except on a second or subsequent offense, in which case the crime is a class [C] B felony.

570.030. 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

2. Evidence of the following is admissible in any criminal prosecution pursuant to this section on the issue of the requisite knowledge or belief of the alleged stealer:

(1) That he or she failed or refused to pay for property or services of a hotel, restaurant, inn or boardinghouse;

(2) That he or she gave in payment for property or services of a hotel, restaurant, inn or boardinghouse a check or negotiable paper on which payment was refused;

(3) That he or she left the hotel, restaurant, inn or boardinghouse with the intent to not pay for property or services;

(4) That he or she surreptitiously removed or attempted to remove his or her baggage from a hotel, inn or boardinghouse;

(5) That he or she, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits, or reproduces a retail sales receipt, price tag, or universal price code label, or possesses with intent to cheat or defraud, the device that manufactures fraudulent receipts or universal price code labels.

3. Notwithstanding any other provision of law, any offense in which the value of property or services is an element is a class C felony if:

(1) The value of the property or services appropriated is five hundred dollars or more but less than twenty-five thousand dollars; or

(2) The actor physically takes the property appropriated from the person of the victim;
or

(3) The property appropriated consists of:

- (a) Any motor vehicle, watercraft or aircraft; or
- (b) Any will or unrecorded deed affecting real property; or
- (c) Any credit card or letter of credit; or
- (d) Any firearms; or
- (e) A United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; or
- (f) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri; or
- (g) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States; or
- (h) Any book of registration or list of voters required by chapter 115, RSMo; or
- (i) Any animal of the species of horse, mule, ass, cattle, swine, sheep, or goat; or
- (j) Live fish raised for commercial sale with a value of seventy-five dollars; or
- (k) Any controlled substance as defined by section 195.010, RSMo; or
- (l) Anhydrous ammonia; or
- (m) Ammonium nitrate.

4. If an actor appropriates any material with a value less than five hundred dollars in violation of this section with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues, then such violation is a class **[D] C** felony. The theft of any amount of anhydrous ammonia or liquid nitrogen, or any attempt to steal any amount of anhydrous ammonia or liquid nitrogen, is a class **[C] B** felony. The theft of any amount of anhydrous ammonia by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator is a class A felony.

5. The theft of any item of property or services pursuant to subsection 3 of this section which exceeds five hundred dollars may be considered a separate felony and may be charged in separate counts.

6. Any person with a prior conviction of paragraph (i) of subdivision (3) of subsection 3 of this section and who violates the provisions of paragraph (i) of subdivision (3) of subsection 3 of this section when the value of the animal or animals stolen exceeds three thousand dollars is guilty of a class B felony.

7. Any offense in which the value of property or services is an element is a class B felony if the value of the property or services equals or exceeds twenty-five thousand dollars.

8. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

570.040. 1. Every person who has previously pled guilty or been found guilty on two separate occasions of a stealing-related offense where such offenses occurred within ten years of

the date of occurrence of the present offense and where the person received and served a sentence of ten days or more on such previous offense and who subsequently pleads guilty or is found guilty of a stealing-related offense is guilty of a class [C] D felony and shall be punished accordingly.

2. As used in this section, the term "stealing-related offense" shall include federal and state violations of criminal statutes against stealing or buying or receiving stolen property and shall also include municipal ordinances against same if the defendant was either represented by counsel or knowingly waived counsel in writing and the judge accepting the plea or making the findings was a licensed attorney at the time of the court proceedings.

3. Evidence of prior guilty pleas or findings of guilt shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior guilty pleas or findings of guilt.

T

Unofficial

Bill

Copy